

OWEN T. ROONEY, ESQ. (Bar No. 127830)
EDRINGTON, SCHIRMER & MURPHY
The Terraces
2300 Contra Costa Blvd., Suite 450
Pleasant Hill, CA 94523
Telephone: (925) 827-3300

[G.C. 6103]

Attorney for Defendants
BAY AREA RAPID TRANSIT DISTRICT
and NOLAN PIANTA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO BRANCH

MEGAN SHEEHAN,

Case No. C14-03156 LB

Plaintiff,

**DEFENDANTS' ANSWER TO THIRD
AMENDED COMPLAINT - JURY TRIAL
DEMANDED**

v.

BAY AREA RAPID TRANSIT DISTRICT,
NOLAN PIANTA, and DOES 1-20, inclusive.

Defendants.

JURY TRIAL DEMAND

Defendants hereby demand a jury trial in this case.

ANSWER

COMES NOW defendants BAY AREA RAPID TRANSIT DISTRICT and NOLAN PIANTA and in answer to plaintiff's Third Amended Complaint, for damages responds as follows:

1. Answering paragraph 1 of the Third Amended Complaint, defendants admit jurisdiction is proper in this Court.

2. Answering paragraph 2 of the Third Amended Complaint, defendants admit venue is proper in this Court.

3. Answering paragraph 3 of the Third Amended Complaint, defendants respond

1 that it lacks sufficient information to admit the allegations in this paragraph and therefore
2 denies them

3 4. Answering paragraph 4 of the Third Amended Complaint, defendants admit the
4 allegations in this paragraph.

5 5. Answering paragraph 5 of the Third Amended Complaint, defendants admit the
6 allegations in this paragraph.

7 6. Answering paragraph 6 of the Third Amended Complaint, defendants respond
8 that it lacks sufficient information to admit the allegations in this paragraph and therefore
9 denies them.

10 7. Answering paragraph 7 of the Third Amended Complaint, defendants respond
11 that it lacks sufficient information to admit the allegations in this paragraph and therefore
12 denies them.

13 8. Answering paragraph 8 of the Third Amended Complaint, defendants respond
14 that it lacks sufficient information to admit the allegations in this paragraph and therefore
15 denies them.

16 9. Answering paragraph 9 of the Third Amended Complaint, defendant BART
17 admits that it employed Officer Pianta. Defendants deny that they acted on concert with the
18 City of Oakland and/or Michael Stolzman.

19 10. Answering paragraph 10 of the Third Amended Complaint, defendants admit
20 that plaintiff was celebrating St. Patrick's Day and that she was unable to care for her own
21 safety because she was extremely intoxicated. Defendants admit the remaining allegations in
22 this paragraph.

23 11. Answering the first sentence in paragraph 11 of the Third Amended Complaint,
24 defendants admit the allegations in this paragraph.

25 12. Answering paragraph 12 of the Third Amended Complaint, defendants admit
26 that plaintiff was initially placed on a bench in the booking area. Defendants admit that there
27 were Oakland police officers in the booking area.

28 13. Answering paragraph 13 of the Third Amended Complaint, defendants admit the

1 allegations in this paragraph.

2 14. Answering paragraph 14 of the Third Amended Complaint, defendants respond
3 that the subject video is the subject of a protective order and should not be made a public
4 document.

5 15. Answering paragraph 15 of the Third Amended Complaint, defendants admit the
6 allegations in this paragraph.

7 16. Answering paragraph 16 of the Third Amended Complaint, defendants admit the
8 first five sentences of this paragraph although the Third Amended Complaint failed to state that
9 plaintiff reached for her purse, ignored Officer Pianta's commands and threw a punch at Officer
10 Pianta. Defendants deny that Pianta and Stolzman acted in a "coordinated effort" as alleged in
11 the sixth sentence in this paragraph.

12 17. Answering paragraph 17 of the Third Amended Complaint, defendants deny
13 there was an "unnecessary take down" as alleged in this paragraph. Regarding the remaining
14 allegation in paragraph 17 of the Third Amended Complaint, defendants respond that it lacks
15 sufficient information to admit the allegations in this paragraph and therefore denies them.

16 18. Answering paragraph 18 of the Third Amended Complaint, defendants respond
17 that it lacks sufficient information to admit the allegations in this paragraph and therefore
18 denies them.

19 19. Answering paragraph 19 of the Third Amended Complaint, defendants respond
20 that it lacks sufficient information to admit the allegations in this paragraph and therefore
21 denies them.

22 20. Answering paragraph 20 of the Third Amended Complaint, defendants admit the
23 allegations in this paragraph.

24 21. Answering paragraph 21 of the Third Amended Complaint, defendants respond
25 that it lacks sufficient information to admit the allegations in this paragraph and therefore
26 denies them.

27 22. Answering paragraph 22 of the Third Amended Complaint, defendants respond
28 that it lacks sufficient information to admit the allegations in this paragraph and therefore

1 denies them.

2 23. Answering paragraph 23 of the Third Amended Complaint, defendants deny the
3 allegations in this paragraph.

4 24. Answering paragraph 24 of the Third Amended Complaint, defendants deny the
5 allegations in this paragraph.

6 25. Answering paragraph 25 of the Third Amended Complaint, defendants deny the
7 allegations in this paragraph.

8 26. Answering paragraph 26 of the Third Amended Complaint, defendants deny the
9 allegations in this paragraph.

10 27. Answering paragraph 27 of the Third Amended Complaint, defendants deny the
11 allegations in this paragraph.

12 28. Answering paragraph 28 of the Third Amended Complaint, defendants deny the
13 allegations in this paragraph.

14 29. Answering paragraph 29 of the Third Amended Complaint, defendants admit
15 that Officer Pianta was in the course and scope of his employment. Defendants respond that it
16 lacks sufficient information to admit the remaining allegations in this paragraph and therefore
17 denies them.

18 30. Answering paragraph 30 of the Third Amended Complaint, defendants deny that
19 Officer Pianta used “intentional and unreasonable force.” Defendants respond that it lacks
20 sufficient information to admit the remaining allegations in this paragraph and therefore denies
21 them.

22 31. Answering paragraph 31 of the Third Amended Complaint, defendants deny the
23 allegations in this paragraph.

24 32. Answering paragraph 32 of the Third Amended Complaint, defendants deny that
25 Officer Pianta was “deliberately indifferent” and/or “acted with a purpose to harm.”
26 Defendants respond that it lacks sufficient information to admit the remaining allegations in
27 this paragraph and therefore denies them.

28 33. Answering paragraph 33 of the Third Amended Complaint, defendants deny the

1 allegations in this paragraph.

2 34. Answering paragraph 34 of the Third Amended Complaint, defendants admit
3 that deny the allegations in this paragraph.

4 35. Answering paragraph 35 of the Third Amended Complaint, defendants deny the
5 allegations in this paragraph.

6 36. Answering paragraph 36 of the Third Amended Complaint, defendants deny the
7 allegations in this paragraph.

8 37. Answering paragraph 37 of the Third Amended Complaint, defendants admit the
9 allegations in this paragraph.

10 38. Answering paragraph 38 of the Third Amended Complaint, as to Officer
11 Pianta's actions, defendants deny the allegations in this paragraph. Defendants respond that it
12 lacks sufficient information to admit the remaining allegations in this paragraph and therefore
13 denies them.

14 39. Answering paragraph 39 of the Third Amended Complaint, defendants deny the
15 allegations in this paragraph.

16 40. Answering paragraph 40 of the Third Amended Complaint, defendants deny the
17 allegations in this paragraph.

18 41. Answering paragraph 41 of the Third Amended Complaint, defendants deny the
19 allegations in this paragraph.

20 42. Answering paragraph 42 of the Third Amended Complaint, defendants deny the
21 allegations in this paragraph.

22 43. Answering paragraph 43 of the Third Amended Complaint, defendants deny the
23 allegations in this paragraph.

24 **AFFIRMATIVE DEFENSES**

25 **QUALIFIED IMMUNITY**

26 AS AND FOR A SEPARATE AFFIRMATIVE DEFENSE to the Third Amended
27 Complaint and the causes of action asserted therein, defendants allege that the individually
28 named defendants, as a public employees, are immune under the common law doctrine of

1 qualified immunity.

2 **IMMUNITY**

3 AS AND FOR A FURTHER, SEPARATE AFFIRMATIVE DEFENSE to the Third
4 Amended Complaint and the causes of action asserted therein, defendants allege that they are
5 immune from suit for damages under 42 U.S.C. Section 1983 under the Eleventh Amendment
6 to the Constitution of the United States.

7 **FAILURE TO STATE A CAUSE OF ACTION**

8 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Third
9 Amended Complaint, defendants allege that plaintiff's Third Amended Complaint fails to state
10 a cause of action against said defendants.

11 **STATUTE OF LIMITATIONS**

12 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Third
13 Amended Complaint, defendants allege that plaintiff's causes of action are barred by California
14 Code of Civil Procedure Section 335.1 and 340(c).

15 **THIRD PARTY NEGLIGENCE**

16 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Third
17 Amended Complaint, defendants allege that certain persons and entities not presently named in
18 this action as plaintiffs or defendants were careless and negligent in and about the matters
19 alleged in the Third Amended Complaint and that the carelessness and negligence on the part of
20 said persons and entities proximately contributed to the happening of the incident and to
21 plaintiff's injuries, and to plaintiff's loss and damages complained of, if any there were.

22 **PLAINTIFF'S COMPARATIVE NEGLIGENCE**

23 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Third
24 Amended Complaint, defendants deny any wrongdoing, negligence, or liability on their part.
25 However, should it be determined that defendants are liable, then defendants further allege that
26 plaintiff also contributed to his own injuries and losses, if any there were, and by virtue of the
27 decision in the case of Li v. Yellow Cab Company (1975) 13 Cal.3d 804, defendants asks that
28 any judgment entered against it be proportionally reduced to the extent that plaintiff's own

1 negligence proximately contributed to his own injuries, death and/or losses, if any there were.

2 **FAILURE TO MITIGATE**

3 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Third
4 Amended Complaint, defendants alleges that plaintiff was bound to exercise reasonable care
5 and diligence to avoid loss and to minimize damages, if any there were, and that the plaintiff
6 may not recover for losses which could have been prevented by reasonable efforts on his part or
7 by expenditures that they might reasonably have made.

8 **PRIVILEGED ACTS**

9 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Third
10 Amended Complaint, defendants allege that the acts set forth in the Amended are privileged.

11 **NO VIOLATION OF CONSTITUTIONAL RIGHTS**

12 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Third
13 Amended Complaint, defendants allege that plaintiff was not been deprived of any
14 constitutional right, whether federal or state, at any time, as alleged herein.

15 **LAWFUL DETENTION**

16 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Third
17 Amended Complaint, defendants allege that the plaintiff was detained as the circumstances
18 were such to indicate to a reasonable person in a like position that such a course of action was
19 called for in the proper discharge of the officers' duties. Plaintiff was lawfully detained
20 incident to his lawful arrest.

21 **GOVERNMENT CODE §§820.2 and 815.2(b)**

22 AS AND FOR A FURTHER SEPARATE, AFFIRMATIVE DEFENSE to the Third
23 Amended Complaint, defendants allege that to the extent the acts complained of were within
24 the discretion of public employees, defendants is immune from liability pursuant to the
25 provisions of Government Code §§820.2 and 815.2(b).

26 **GOVERNMENT CODE §905**

27 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Third
28 Amended Complaint, defendants allege that plaintiff's action is barred to the extent that

1 plaintiff has failed to comply with Government Code §905.

2 **GOVERNMENT CODE §900, ET SEQ.**

3 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Third
4 Amended Complaint, defendants allege that plaintiff's Amended exceeds the scope of his
5 claim, both in respect to theories of liability asserted and to injuries and damages claimed. It is
6 therefore barred pursuant to Government Code § 900, et seq.

7 **GOOD FAITH IMMUNITY**

8 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Third
9 Amended Complaint, defendants allege that at all times relevant herein, defendants acted with a
10 good faith belief that its actions were proper and lawful and did not violate clearly established
11 law, and consequently, defendants is entitled to immunity.

12 **PUNITIVE DAMAGES**

13 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Third
14 Amended Complaint, defendants are immune from claims for punitive damages, pursuant to
15 California Government Code Section 818, and under federal law.

16 **CALIFORNIA GOVERNMENT CODE IMMUNITIES**

17 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the
18 Amended Third Amended Complaint, defendants allege that it is immune from suit herein
19 under applicable California immunity statutes, including, but not limited to, California
20 Government Code §§ 815.2, 818, 818.2, 818.4, 818.8, 820.2, 820.4, 820.6, 820.8, 821, 821.2,
21 821.6, 821.8, and 822.2.

22 **WILLFUL CONTRIBUTORY NEGLIGENCE**

23 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Third
24 Amended Complaint, defendants alleges that plaintiff was himself willfully careless and
25 negligent in and about the matters alleged in the Amended and that said willful carelessness and
26 negligence on said plaintiff's own part proximately contributed to the happening of the accident
27 and to the injuries and to the loss and damages complained of, if any there were.

28 ///

1 **AMOUNT OF FORCE**

2 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Third
3 Amended Complaint, defendants allege that a police officer is entitled to use reasonable force
4 and is not required to use the least amount of force necessary.

5 **USE OF FORCE**

6 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Third
7 Amended Complaint, defendants allege that the force used was authorized and permitted under
8 various sections of the Penal Code, including but not limited, §§835,835(a),836.5(b), and 843.

9 **MONELL**

10 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Third
11 Amended Complaint, defendants allege proof of random acts or isolated incidents of
12 unconstitutional action by a non-policymaking police officer are insufficient to establish the
13 existence of a municipal policy or custom.

14 **RATIFICATION**

15 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Third
16 Amended Complaint, defendants allege the Chief of Police's knowledge, if any, of the
17 defendants officers' violations of plaintiff's constitutional rights does not mean that Chief of
18 Police violated plaintiff's constitutional rights. Rather, plaintiff must prove that the Chief of
19 Police, through his own actions, violated plaintiff's constitutional rights. Plaintiff must prove
20 that defendants, in his capacity as the Chief of Police, undertook a course of action for the
21 purpose of violating plaintiff's constitutional rights.

22 **TRAINING**

23 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Third
24 Amended Complaint, defendants allege the alleged inadequacy of police training may serve as
25 the basis for §1983 liability only where the failure to train amounts to deliberate indifference to
26 the rights of persons with whom the police come into contact.

27 **PRAYER**

28 WHEREFORE, defendants pray for relief as follows:

1. That plaintiff take nothing by this action;
2. That plaintiff's prayer for expenses, costs and attorneys fees be denied;
3. That plaintiff be required to pay defendants' reasonable attorney's fees and costs incurred in the defense of this action; and,
4. For any such relief that justice requires and this Court deems proper.

DATED: May 26, 2015

EDRINGTON, SCHIRMER & MURPHY LLP

By: /s/
Owen T. Rooney